

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CLARENCE HAYES]
Petitioner,]
]]
v.] No. 3:09-1167
] JUDGE HAYNES
JAMES FORTNER, WARDEN]
Respondent.]

O R D E R

Presently pending before the Court is a pro se prisoner petition (Docket Entry No.6) under 28 U.S.C. § 2254, for writ of habeas corpus. The Court is required at this stage of the proceedings to conduct a preliminary review of the petition to determine whether it contains colorable claims or is subject to dismissal. Rule 4, Rules Governing § 2254 Cases.

In July, 2008, a jury in Davidson County found the Petitioner guilty of first degree murder. For this crime, he received a sentence of life imprisonment. Docket Entry No.10-2 at pg.5. The Petitioner brings this action against Warden James Fortner, his custodian at the Turney Center Industrial Prison, seeking to overturn the conviction.

A petition for federal habeas corpus relief will not be considered unless the Petitioner has first exhausted all available state court remedies for each claim presented in his petition.

Cohen v. Tate, 779 F.2d 1181, 1184 (6th Cir.1985). The burden of showing compliance with the exhaustion requirement rests with the Petitioner. Rust v. Zent, 17 F.3d 155,160 (6th Cir.1994).

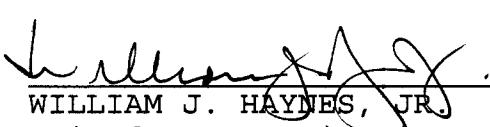
According to his petition, Petitioner conviction is currently being reviewed by the Tennessee Court of Criminal Appeals on direct appeal. Docket Entry No.6 at pg.2. Thus, the Petitioner has concedes that he has not yet fully exhausted his state court remedies. When a habeas corpus Petitioner has failed to exhaust all state court remedies for each claim in his petition, a district court is obliged to dismiss the petition. Rose v. Lundy, 455 U.S. 509, 522 (1982).

Accordingly, this action is **DISMISSED without prejudice** for Petitioner's failure to exhaust his state remedies.

This is the Final Order in this action.

It is so ORDERED.

ENTERED this the 15th day of December, 2009.


WILLIAM J. HAYNES, JR.
United States District Judge